

**Medical Board of California**  
**FINAL STATEMENT OF REASONS**

Hearing Date: July 24, 2009

(1) Section(s) Affected: 1355.4

Updated Information

The Initial Statement of Reasons is included in the file and accurately reflects the final regulatory action taken by the board.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

This action will not have any adverse economic impact on small businesses, as it affects educational institutions located outside the United States.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board/bureau/commission/program would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Objections or Recommendations/Responses

The Medical Board received written comments from three organizations: the California Medical Association; CalPIRG; and the Center for Public Interest Law. The comments of their representatives made at the public hearing followed those provided in their letters.

The following comments were made regarding the proposed action:

- (1) Patient advocate Tina Minasian supported the proposed regulation, as she did not know of the existence of the Medical Board when she was injured by a physician, and her experience has been that others do not, either. The statute of limitations further complicates patients' ability to file complaints. The proposed regulation will make consumers better informed and improve communication between patients and physicians.

☒ This comment was accepted but modification to the proposed action was not needed to accommodate the comment.

(2) Paul Finney, M.D. and Yvonne Choong of the California Medical Association (CMA) objected on the following grounds:

- The regulation is unnecessary because state law already requires physicians to post their medical licenses or wear a name tag.

☒ This objection was rejected because: Contact information for the Medical Board is not on physicians' licenses nor their name tags.

- The regulation would create an administrative burden on physicians that translates to increased costs

☒ This objection was rejected because: If physicians choose to post a sign, it will cost a few cents to download the sign from the Medical Board's Web site, and approximately \$4 – 5 to buy a frame from an office supply store. If more than one physician works in an office, the cost to each will be even less. If physicians choose to provide the information on a piece of paper to each patient, the cost will be a few cents per page per patient.

- The regulation does not provide any meaningful benefit to the doctor-patient relationship or to the health care system. Other options, such as complaining to the insurance company or local medical society exist.

☒ This objection was rejected because: The Medical Board is the only entity with the authority to protect the public by disciplining a medical license. Additionally, not all patients have insurance and medical societies do not have the power to investigate complaints and discipline licensees when appropriate.

- Failure to comply with a new regulation will constitute a new cause of action against physicians.

☒ This objection was rejected because: While non-compliance with this section may result in enforcement action against a physician, that concern must yield to public protection when the Board exercises its regulatory functions. (See Business and Professions Code section 2001.1.) If a complaint is received, failure to comply will likely result in a request by the Board for corrective action and, if compliance is not achieved, then a citation and fine. Moreover, the Board has been mandated to promulgate regulations by Business and Professions Code section 138.

- New calls made "out of confusion" to the Board will simply add to its work load and impede its ability to keep up.

X   This objection was rejected because: The Board has the capability to handle the potential increase in calls that may result from this regulation.

- The regulation puts the responsibility for compliance on the physician when in some environments it may be out of his/her control (e.g., for hospitalists).

  X   This objection was rejected because: Physicians may select and use the notification method that best suits their work environment. In the case of a hospitalist, he or she may negotiate with the hospital and reach a solution as to the posting of a sign. If an accord cannot be reached, he or she may use one of the remaining notification options.

- A sign may detract from “an atmosphere of trust necessary to the doctor-patient relationship.”

  X   This objection was rejected because: The trust that is helpful to the doctor-patient relationship is best cultivated by the physician in his/her interaction with the patient, and unlikely to be undermined by the Medical Board’s proposed disclosure requirement.

- (3) Julie D’Angelo Fellmeth, Center for Public Interest Law, supported the regulation, stating Business and Professions Code section 138 mandates that the Board require its licensees to provide notice to their patients that they are licensed by the State of California. She stated a nametag does not do this. She indicated the Legislature wants clients and patients to know where to file a complaint and to avail themselves of the information and services provided by regulators. As the Board’s former Enforcement Monitor, Ms. Fellmeth reported she saw countless cases where the Board was unable to take action because patients filed their complaints after the running of the statute of limitations, being unaware of the Board’s existence and its role until it was too late. She also reported she saw many cases where the Board’s investigators, in investigating a case, checked the Civil Index and found numerous medical malpractice actions filed against a physician by patients who had never also filed a complaint with the Board. Ms. Fellmeth stated the regulation had been written to eliminate any burden on physicians and provided options for compliance to doctors who do not have office-based practices. She stated there was ample precedence for the regulation with hospitals and health facilities, pharmacists, optometrists and many other licensed professionals required to post signage by whom they are regulated. She concluded by saying the regulations were not burdensome, confrontational or adversarial, but merely informational and consistent with the Board’s

public protection priority. She also suggested the Board consider requiring the posting of the sign or provision of the information in languages other than English by physicians whose patients don't speak English as their first language.

  X   This comment was accepted but modification to the proposed action was not needed to accommodate the comments in support. The multiple-language suggestion is an interesting one, but the Board would like to start with the initial English-only notice and see how it is received before imposing additional language requirements.

(4) Bindhu Varghese of Consumers Union spoke in support of the regulation, on behalf of Consumers Union, CalPIRG, the California Pan-Ethnic Health Network, the California Safe Patient Network, and the Consumer Federation of California. She stressed that the Board must rely on an informed public to do its job of patient protection. She asked that the regulation be "strengthened" in three ways:

1. Require physicians to both post the notice and provide it on a piece of paper to be sent home with the patient.
2. Amend the language to include the statement: "Complaints about care can be submitted to the MBC." This would make the contact information in the notice clearer.
3. Physicians should post the notice in English and any other language regularly encountered by physicians and their staff. MBC should make the translations available on its Web site in the Department of Managed Health Care's 13 languages.

  X   This recommendation was rejected because:

1. The Board believes the use of any one of the options is sufficient to comply with Business and Professions Code section 138. However, nothing prevents a physician from providing additional notice to his or her patients.
2. The Board believes the language in its proposed notice, especially since its contact information is provided, adequately conveys the idea that MBC is the place to go to with complaints and for information about physicians, and that the Board regulates physicians.
3. Again, the multiple language suggestion is an interesting one, but the Board would like to start with the initial English-only notice and see how it is received before imposing additional language requirements.

(5) Mary Knight Johnson, a consumer, stated that she was a victim of a surgical mishap, had no idea that the Medical Board existed, and only sued the physicians involved civilly. She wanted the Board to know her story, as she supports the regulation.

  X  

This comment was accepted but modification to the proposed action was not needed to accommodate the comment.